

October 7, 2005

MEMORANDUM FOR: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of Small Diameter Seamless Carbon and Alloy Steel Standard,
Line and Pressure Pipe from Brazil; Final Results of Antidumping
Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil (A-351-826) for the period 8/1/2003 - 7/31/2004. As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

1. CEP Profit Adjustments
2. Establishing the Most Similar Foreign Like Product
3. Date of Sale
4. Revised Cost Database
5. Clerical Errors: Revisions to Variable and Total Costs of Manufacturing

Background

On May 10, 2005, we published in the Federal Register the preliminary results of this administrative review. See Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review, 70 FR 24524 (“Preliminary Results”). The period of review (POR) is August 1, 2003, through July 31, 2004.

This review covers sales of small diameter seamless carbon and alloy steel standard, line and pressure pipe made by one manufacturer/exporter, V&M do Brasil S.A. (“VMB” or “respondent”). We invited parties to comment on our preliminary results. We received a case brief from VMB on June 9, 2005. We received a rebuttal brief from United States Steel Corporation (“US Steel” or “petitioner”) on June 17, 2005.

On August 16, 2005, because it was not practicable to complete the final results of this review within the original time period, the Department published in the Federal Register an extension of the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”). See Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 70 FR 48102 (August 16, 2005).

Discussion of the Issues

Comment 1. CEP Profit Adjustments

Respondent:

VMB argues that, when calculating the constructed export price (“CEP”) profit for its preliminary results, the Department neglected to include all applicable adjustments to the calculation of total revenue. VMB states that the Department’s practice has long been to adjust a respondent’s reported gross invoice prices for other reported items and expenses that are not classifiable as sales revenue or which constitute additional adjustments to sales revenue. Citing to Stainless Steel Plate in Coils from Belgium, VMB notes in that review, the Department erred in deducting the respondent-reported billing adjustments from the home market price, but not making the same deduction for billing adjustments when calculating the home market sales revenue for the CEP profit calculation.¹ In its final results, the Department revised its calculation of sales revenue for purposes of the CEP profit. VMB further argues, that in the previous administrative review of Seamless Pipe from Brazil, the Department had made several adjustments to the home market price, which were in turn carried over to the Department’s adjustment of sales revenue when calculating the CEP profit. See Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Brazil, 70 FR 7243 (February 11, 2005).

VMB argues that the calculation of home market sales revenue to derive the CEP profit in the instant review should include deductions for its reported billing adjustments (field BILLADJH)

¹ See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Belgium, 67 FR 64352 (October 18, 2002), and the attached Decision Memorandum at Comment 2.

and indirect taxes incurred in Brazil (fields IPIH, ICMSH, PISH, and COFINSH), the sum of which the Department created a new variable, IND TAX.²

Petitioner Rebuttal:

Petitioner agrees in part with VMB's assessment. To the extent that petitioner concurs with VMB's argument that billing adjustments and indirect taxes were omitted from the home market sales revenue calculation, petitioner also noted in its rebuttal brief that VMB failed to mention two additional adjustments that should also be made to the sales revenue calculation. Specifically, petitioner argues that VMB reported in its Section B questionnaire response that it makes upwards adjustments to gross prices, when applicable, by issuing complementary invoices. VMB reported the gross unit prices of these complementary invoices in its questionnaire response under the field GRSUPRCH. Additionally, petitioner points out that VMB also collects interest revenue on late payments for its home market sales and has reported the interest payments in two fields, INTREV1H and INTREV2H. See VMB's Section B Questionnaire Response, dated November 19, 2004. Therefore, in addition to agreeing with VMB that the Department should make adjustments for BILLADJH and IND TAX to the home market sales revenue calculation, petitioner argues that the Department should also include the variables for INTREVVH and GRSUPRCH to the sales revenue calculation as well.³

Department's Position:

We agree with both parties. It is the Department's practice to make adjustments to the home market (as well as the U.S.) sales price per the respondent-reported variables in the sales database. Similarly, those adjustments made to the net price must also be made to the Department's calculation of sales revenue for purposes of calculating the CEP profit. Accordingly, we agree with VMB that the Department inadvertently omitted the reported billing adjustments and indirect taxes from the calculation of home market sales revenue.

The Department also agrees with petitioner that we should adjust home market sales revenue to account for VMB's reported interest revenue and complementary invoices.⁴ We note that these variables were adjusted for in our calculation of the home market net price, and as such, should

² IPIH, ICMSH, PISH, COFINSH are variable names for the various home market taxes present on commercial transactions in Brazil. Respectively, they are the *Impostos sobre Produtos Industrializados* (IPI), a tax on domestic sales of industrialized products; *Imposto sobre Circulação de Mercadorias e Serviços* (ICMS), a value-added tax on merchandise and services; *Programa de Integração Social* (PIS), tax levied only on domestic sales revenue (not export revenues), and; *Contribuição do Financiamento Social* (COFINS), another value-added tax paid on domestic sales revenues.

³ BILLADJH = Home Market Billing Adjustments; IND TAX = Sum of Indirect Taxes Incurred in the Home Market; INTREV1H = Customer-specific Interest Revenue; INTREV2H = Allocation of Interest Revenue Received (unable to link to specific customer); INTREVVH = INTREV1H + INTREV2H

⁴ The Department consolidated the two interest revenue variables in our home market sales program (i.e., INTREV1H + INTREV2H = INTREVVH). See Home Market Sales Program for the Preliminary Results at line 14832.

also be included as adjustments in the calculation of home market sales revenue. We note that Department followed this practice in the prior period's review of seamless line and pressure pipe from Brazil, as well as in other cases, *i.e.*, Stainless Steel Plate in Coils from Belgium; Final Results of Antidumping Duty Administrative Review, 67 FR 64352 (October 18, 2002), and the attached Issues and Decision Memorandum at Comment 2. For the current review, the Department will revise the calculation string for home market sales revenue to account for all appropriate adjustments necessary to calculate the CEP profit, and does so in accordance with sections 772 (c) and (d) of the Act.⁵

Comment 2. Selecting the Most Similar Foreign Like Product

Respondent:

VMB argues that the Department's policy is to select the most "physically similar match" when testing for sales of an identical or similar model of the foreign like product, and furthermore, that it is the Department's methodology to identify the most physically similar match by determining which of the home market models has the smallest cost differences compared to the relevant U.S. sale. *See* VMB's Case Brief, dated June 9, 2005, at page 9. VMB argues that the programming language in the preliminary results does not identify the home market model with the smallest cost difference as the most physically similar match, but rather, the Department sorts through the sales data based on the month that the home market model was sold, thereby allowing the contemporaneity of the sale to take precedence over the actual cost difference. VMB contends that the Department's programming language used in the preliminary results, namely selecting the most similar foreign like product first by level of trade, followed by contemporaneity of the sale and finally by cost difference, does not determine the most similar home market model.

Petitioner's Rebuttal:

Petitioner argues that section 771(16)(B) of the Act provides that where it is not possible to compare the company's U.S. sales to its sales of the identical product in the home market, the Department will compare the respondent's U.S. sales to its sales of the most similar merchandise in the home market. However, petitioner claims that the statute is silent with regard to the manner in which the most similar merchandise is to be selected, and as such, the Department has "broad discretion to apply an appropriate model match methodology to determine which home market products should be compared to the products sold in the United States." *See* Petitioner's Rebuttal Brief, dated June 17, 2005, at page 4.

Petitioner highlights that in the current review, the Department has determined that there are two most similar home market products that could be matched to the U.S. sale, and therefore argues that the primary basis for selecting between the two should be the month in which the home market product is sold (*i.e.*, selection through contemporaneity of the sale). Countering VMB's assertion that the home market product with the smallest cost difference (or DIFMER percentage) should be selected as the most physically similar match, petitioner argues that cost

⁵ REVENUH = (GRSUPRH + GRSUPRCH + INTREVVH - BILLADJH - INDTAX - DISCREBH) * QTYH.

difference should be used to select between the two equally most similar home market products only where both are made in the same month as the U.S. sale.

Additionally, petitioner contends that selecting the most similar foreign like product by the contemporaneity of the sale, and cost difference only when there are more than one potential matches in the same month as the U.S. sale, is the precise methodology used in the prior period review (*i.e.*, August 2002 through July 2003). See Memorandum from Helen Kramer and Patrick Edwards to Richard O. Weible regarding Alleged Ministerial Errors in the Final Results of Review, dated March 14, 2005) at page 4. Petitioner contends that no change to the margin calculation program, or the Department's methodology, from the preliminary results is required with regard to this issue.

Department's Position:

We agree in part with petitioner. Section 773(a)(1)(B)(i) of the Act instructs the Department that the normal value shall be based on prices "to the extent practicable, at the same level of trade" as the U.S. sale, section 773(a)(1)(A) of the Act instructs the Department that the normal value shall be based on prices "at a time reasonably corresponding to the time" of the U.S. sale. When faced with a choice of two or more models among which we must select, it is appropriate to take into account differences in level of trade and contemporaneity before using the differences in cost to select the single most similar model.

We note that the Department has seen inconsistencies in the methodology used across antidumping proceedings with regard to the methodology used to select the most similar foreign like product when identical matches are absent. In the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 70 FR 54711, (September 16, 2005) ("03/04 AFBs"), the Department noted that:

In some proceedings, we have accorded more weight to the differences in the VCOM than we have differences in level of trade and contemporaneity. In other proceedings, we have accorded more weight to differences in level of trade and contemporaneity than we have to the differences in VCOM. (See 03/04 AFBs and the attached Issues and Decision Memorandum at Comment 2).

Additionally, in 03/04 AFBs, the Department explicitly states, "in the interest of administrative consistency, we hereby state our intended practice across all antidumping proceedings...we find that it is more appropriate to place more weight on level-of-trade and contemporaneity concerns than on differences in costs." Furthermore, the Department decided in 03/04 AFBs that differences in cost are "more relevant to the comparison of normal value with U.S. price," and therefore, "when faced with a choice of two or more models among which we must select using our model-matching methodology, we determine it is appropriate to take into account differences in level of trade and contemporaneity before using the differences in cost to select the single most-similar model." See 03/04 AFBs and the attached Issues and Decision Memo at Comment

2. Therefore, the Department will make no adjustments to the language used in the current review's margin calculation program, and will continue to identify the most similar foreign like product by the level of trade and contemporaneity of the sale when identical matches are absent.

Comment 3. Date of Sale

Respondent:

VMC argues that in its preliminary results, the Department had purported to use the U.S. invoice date as the U.S. date of sale. See Analysis Memorandum for the Preliminary Results of the Antidumping Administrative Review of Small Diameter Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Brazil: V&M do Brasil, SA, dated May 3, 2005, at page 2. VMC contends that its U.S. terms of sale can change and are not considered final until the date of issuance of the sales invoice from V&M Corporation to its unaffiliated U.S. customer. Thus, the Department correctly used the U.S. invoice date (as reported in the field SALINDTU) as the U.S. date of sale. See VMC's Section C Questionnaire Response, dated November 11, 2004, at page C-13.

However, VMC points out that the Department did not use the invoice date as the U.S. date of sale in its margin calculation program. VMC argues that in its preliminary results, the Department used the field SALEDATU to define the U.S. date of sale, rather than SALINDTU. VMC states that it had intended to exclude the SALEDATU field, but instead reported VM Corp.'s order date in this field. By using SALEDATU instead of SALINDTU as the sale date, the date of sale for all of VMC's U.S. sales resolves to the order date rather than the invoice date.

VMC notes that in the previous administrative review of seamless line and pressure pipe from Brazil, VMC had made a similar error, but that as a result of the Department's verification, the Department recognized that VMC had never intended to use the order date as the U.S. date of sale. Furthermore, as the Department found that the quantity and terms of sale had changed after the purchase order was issued, the Department elected to use the invoice date as the U.S. date of sale. See Analysis Memorandum for the Preliminary Results of Administrative Review of Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Brazil: V&M do Brasil, SA, dated May 10, 2005, at page 2.

Petitioner's Rebuttal:

Petitioner did not comment on this issue.

Department's Position

The Department intended to use the sales invoice date as the date of sale because this is the date the material terms of sale are set. Because the date reported in the field SALEDATU is clearly the purchase order date, and because VMC has admitted that this field erroneously included the purchase order date, the Department will not use this field in the final results and will instead use the field SALINDTU for date of sale.

Comment 4. Use of Revised Cost Database

Respondent:

VMB submitted two versions of its cost database for this proceeding, with each version based on a different reporting methodology. VMB states that in the preliminary results the Department relied on version 2 of the cost database, which is based on a product-specific variance methodology. However, VMB asserts that version 1 of the cost database is based on a product-family variance methodology and therefore provides a more accurate reflection of its costs. VMB states that the product-specific actual costs generated by VMB's cost accounting system, which is the basis of the version 2 database, can be incomplete and inaccurate because it fails to account for instances where portions of orders are downgraded, orders span two months, or data entry errors are not corrected. As a result, the version 2 database can have anomalous costs for a given product. VMB explains that in order to eliminate these distortions, VMB developed a different methodology for reporting costs, as reflected in its version 1 database. VMB explains that the version 1 methodology eliminates anomalies by allocating the total product variances and distortions grouped by product family over all products within the family.

VMB argues that while the Department used the cost database based on the product-specific methodology in the previous review, the facts in the instant review are notably different. VMB points out that in this review the Department has identified control numbers ("CONNUM") in the version 2 cost database which have a distorted cost and argues that these distortions are eliminated in the version 1 cost database. VMB argues that the Department's determination of the appropriateness of either methodology should be based on the facts in each review.

Petitioner's Rebuttal:

Petitioner argues that the Department's use in the preliminary results of version 2 of the cost database (based on the product-specific variance methodology) rather than version 1 of the cost database (based on a product-family variance methodology) is correct. Petitioner claims that the cost based on the product-family variance methodology fails to meet two requirements for costs.

First, petitioner argues that the law requires the Department to perform its margin calculations based upon costs obtained from the respondent's normal books and records. Petitioner contends that the version 2 cost database comports with this requirement. Second, petitioner claims that it is the Department's practice to require the reporting of costs on a CONNUM-specific basis. See Koenig & Bauer-Albert AG v. United States, 90 F. Supp. 2d 1284, 1288 (CIT 2000), affirmed-in-part, vacated-in-part, and remanded on other grounds, Koenig & Bauer-Albert AG v. United States, 259 F.3d 1341 (Fed. Cir. 2001) ("Koenig & Bauer-Albert"). Petitioner believes that the costs based on the product-specific variance methodology meets this requirement better than the costs based on the product-family variance methodology because the latter methodology is a categorization of specific products and that applying a product-family variance to actual specific product cost results in costs which are not product specific. Accordingly, petitioner argues that costs based on the product-family variance methodology fails to meet these two requirements.

Further, petitioner cites the Department's instruction in the previous segment to VMB to provide the product-specific version of the cost database as evidence of the Department's preference for actual product-specific costs from the company's normal books and records. Petitioner asserts that VMB never challenged the use of those costs in the previous review.

Petitioner rejects VMB's argument that facts in the current review warrant the use of the cost file based on the family variance methodology. Petitioner believes that a change in facts from the previous review to the current review is irrelevant in determining which cost database to utilize. Petitioner believes that under no circumstances should costs be used that are based on the family variance methodology because of the inherent problems of this methodology as summarized above (i.e., the costs are not VMB's normal books and records and are not CONNUM specific).

Finally, petitioner states that even if the change in the facts of the case from the previous segment to the current segment is relevant in determining which cost database to use, the facts in the current segment have not changed from the previous review. Petitioner argues that what VMB calls "aberrations" occur in the product-specific database of both the current and previous reviews and in both reviews the Department gathered the information necessary to adjust that database.

Department's Position:

We agree with petitioner that the Department correctly used the version 2 cost database in the preliminary results. Section 773(f)(1)(A) of the Act says that costs should be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. VMB provided two versions of its cost database. One version (i.e., version 1) was based on a methodology where variances were calculated at a product-family level and then applied to each reported product. This methodology is not used in VMB's normal books and records, but developed specifically for reporting purposes. The second version (i.e., version 2) was based on a methodology used in VMB's normal books and records where variances are tracked and applied on a product-specific basis.

In this proceeding, VMB asked the Department to reject its normal variance allocation methodology used in its accounting system (i.e., version 2) to value inventory and cost of goods sold in favor of costs calculated for purposes of this review. As noted, however, the Department's practice is to rely on respondent's books and records unless they do not reasonably reflect costs associated with the production of subject merchandise.

In considering whether VMB's normal accounting practices (i.e., product-specific variance allocation methodology) were reasonable, the Department examined the documents on the record (e.g., cost build-ups, financial and cost accounting reports, the cost database, etc.). Based on our review of record evidence, the Department found that VMB tracks costs on a detailed product level in its accounting system that allows the company to provide detailed product-specific costs for each CONNUM thus negating the need to go outside its normal books and records for

reporting purposes. As a result, contrary to VMB's assertions, the Department did not find that the manner in which its accounting system tracks costs distorted the reported costs. Therefore, for the final results, the Department used the cost database that was prepared using VMB's normal books and records (i.e., version 2, product-specific variance allocation methodology).

The Department did identify one error in the database related to an incorrect allocation of the costs for one cost center. Consequently, we requested that VMB quantify the impact of the error on the version 2 database and resubmit the corrected cost data for the affected CONNUMs with a "patch" database, to be used as a supplement to the version 2 cost database. See Memorandum to Neal Halper from Frederick Mines regarding Cost of Production and Constructed Value Calculation Adjustments for the Final Results - V&M do Brasil, dated October 7, 2005.

Comment 5. Clerical Errors

Respondent

VMB argues the Department inadvertently included several variables in its home market and U.S. sales programs, which VMB argues distorts the home market variable cost of manufacture (field VCOMH) and the total and variable costs of manufacture in the U.S. market (fields TCOMU and VCOMU, respectively). VMB maintains that the Department revised VMB's reported VCOMH, VCOMU and TCOMU per the Department's Cost Memorandum dated May 3, 2005, but did not omit these variables from the home market and U.S. sales databases submitted by VMB.⁶ As a result, VMB contends that when the margin calculation program merges the cost and sales databases, the program "inconsistently" assigns the variable and total manufacturing costs in the sales databases to many of the sales transactions, thus distorting the costs reported for identical product control numbers (CONNUMH and CONNUMU). VMB notes that to correct the error, the Department should drop the VCOMH variable from the home market sales database and VCOMU and TCOMU variables from the U.S. sales database.

Petitioner

Petitioner did not comment on this issue.

Department's Position

We agree with respondent. For the final results, the Department has corrected the calculations using the methodology proposed by VMB. See the Final Analysis Memo.

⁶ See Memorandum to Neal Halper from Frederick Mines regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - V&M do Brasil, dated May 3, 2005.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of the review and the final weighted-average dumping margin for VMB in the Federal Register.

AGREE _____ DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date